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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,489	08/04/2006	Eric Perouse	2006_1244A	6680
513 7590 08/11/2010 WENDEROTH, LIND & PONACK, L.L.P. 1030 15th Street, N.W., Suite 400 East Washington, DC 20005-1503				
EXAMINER				
TANNER, JOCELYN C				
ART UNIT		PAPER NUMBER		
3731				
NOTIFICATION DATE		DELIVERY MODE		
08/11/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ddalecki@wenderoth.com

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**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/588,489

**Applicant(s)**

PEROUSE, ERIC

**Examiner**

JOCELIN C. TANNER

**Art Unit**

3731

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 29 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 25-44.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Anh Tuan T. Nguyen/  
Supervisory Patent Examiner, Art Unit 3731

/Jocelin C. Tanner/  
Examiner, Art Unit 3731

Continuation of 11, does NOT place the application in condition for allowance because: 10. The Applicant contends that the combination of Berg et al. ('048) and Goldstein et al. fails to disclose connecting hooks to wires of the lattice at opposite sides of one mesh such that when the mesh expands the hooks cross each other. However, Berg et al. ('048) discloses a clamp formed of two external hooks that are connected to opposite sides of a mesh, as shown in the submitted figures by the Examiner within the previous Office Action. Goldstein et al. teaches a graft being capable of expanding and contracting such that by modifying the graft of Berg et al. with the capability of expanding and contracting, the clamps attached to a mesh would be capable of opening and closing with the expansion and contraction of the meshes. Berg et al. ('713) also teaches a graft having fingers or "clamps" that overlap when implanted within a body. Therefore, it would have been obvious to have provided the clamps of Berg et al. ('048) with the capability of overlapping when closed such that tissue is compressed therebetween to ensure stability of the graft. The Applicant contends that the clamps of Berg et al. ('048) could not be crossed and still properly engage opposite surfaces of the tubing wall. However, the hooks of the clamps of Berg et al. ('048) engage the surface of the inner and outer walls and overlapping the clamps, as taught by Berg et al. ('713), would provide the advantage of helping to increase the contact area between the clamps and the tissue between them, thus providing stability to the graft upon implantation. The Applicant contends that Perez et al. fails to disclose a lattice delivery tube defining a confinement duct in which the lattice is confined in the retracted state. However, Perez et al. discloses a capsule or "retaining device" (333) within the main catheter (330) restrains a repair device (390) and prevents deployment of the graft, a stop ring or "confinement duct" within inner catheter (320) that is separate from the main catheter and includes channels into which hooks are pressed. .